IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16308 of 2004

Between:
Adari Tulasi Rao, S/o Sri Venkataramanayya,
R/o Yelamanchili, Visakhapatnam District

..... PETITIONER

AND

1 The A.P.Eastern Power Distribution Co.Ltd Dabagardens, Visakhapatnam
rep.by its Chairman & Managing Director
2 The Assistant Divisional Engineer, Operation, A.P.E.P.D.C.L. Yelamanchili,
Visakhapatnam District
3 The Assistant Divisional Engineer, D.P.E.(Detection of Pilferage of
Electricity)-II, A.P.E.P.D.C.Ltd. Opp. Hotel Green Park, Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ order or direction particularly one in the nature of Mandamus declaring the impugned proceedings No.ADE/OP/YLM/S.Er/F.D.O.C./D.No.1321 dated 24-08-2004 of the 2nd respondent as arbitrary, illegal and consequently nullify the said demand pending enquiry into the allegations followed by personal inspection to the premises by the enquiry officer, while continuing the power supply to the connection No.SC 115 Kokkirapalli Village.

Counsel for the Petitioner: DR.P.B.VIJAY KUMAR

Counsel for the Respondents: MR.M.SUBBARAO

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a declaration that the impugned proceedings No.ADE/OP/YLM/S.Er/F.D.O.C./D.No.1321 dated 24.08.2004 of the second respondent, are arbitrary and illegal and consequently to nullify the impugned proceedings while continuing the power supply to the petitioner's service connection bearing No.SC 115 of Kokkirapalli village.

The petitioner states that he is the owner of the agricultural lands situated in Kokkirapalli village of Yelamanchili Mandal and that for the purpose of irrigating the same he obtained electricity service connection bearing No.SC 115.

While so, the petitioner was served with the impugned notice dated 24.08.2004 stating that on 16.08.2004 the service connection of the petitioner was inspected by ADE/DPE-II/Visakhapatnam and during the inspection it was noticed that the supply has been extended from the main of the agricultural motor fixed on the petitioner's switch board to another motor of 3 HP for supplying water to the poultry by laying a permanent under-ground pipeline up to the poultry water tank which

indicates that the petitioner is guilty of malpractice. The value of the energy misused has been provisionally estimated at Rs.94,066/- and the petitioner was directed to pay a sum of Rs.47,033/- being half of the estimated value if he is desirous of the continuation of power supply. The said notice is under challenge in this writ petition.

I have heard the learned counsel for the petitioner and Sri M.Subbarao, the learned Standing Counsel appearing for the respondents.

The learned counsel for the petitioner contends that the assessment made by the respondents under the impugned notice is erroneous and that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 (for short 'the Act').

It is to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Act, held that under the Act there is no power, while issuing provisional assessment, to forthwith stop or disconnect power supply or call upon the consumer to pay even part of the provisional assessment amount till final assessment is made.

In the circumstances, following the ratio laid down in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned notice dated 24.08.2004 is set aside leaving it open to the Assessing Authority to make a final assessment in

accordance with law after affording due opportunity to the petitioner to submit his explanation. It is made clear that till the enquiry is completed and appropriate orders are passed, there shall not be any disconnection of the power to the petitioner's service connection.

With the above directions, the writ petition is disposed of. No costs.

_____

13.09.20004

VGB

To

1 The Chairman & Managing Director, A.P. Eastern Power Distribution
Co.Ltd, Dabagardens, Visakhapatnam.
2 The Assistant Divisional Engineer, Operation, A.P.E.P.D.C.L. Yelamanchili,
Visakhapatnam District
3 The Assistant Divisional Engineer, D.P.E.(Detection of Pilferage of
Electricity)-II, A.P.E.P.D.C.Ltd. Opp. Hotel Green Park, Visakhapatnam
4 2CD copies